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Attorneys for Defendant Sheriff David Wendt

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

CHAD BURTON HILL AND
LOUISA BISSETTE,

Plaintiffs,

v.

PAUL BURT, TED CALDWELL,
FLYING J RANCH, LLP,
BEAVERHEAD COUNTY SHERIFF
DAVID WENDT, BEAVERHEAD
COUNTY, and DOES 1-10,

Defendants.

CV-23-34-BU-DWM

DEFENDANT SHERIFF DAVID
WENDT'S PRELIMINARY
PRETRIAL STATEMENT

Defendant Beaverhead County Sheriff David Wendt ("Wendt"), by and through undersigned counsel of record, Garlington, Lohn, & Robinson, PLLP,

respectfully files this Preliminary Pretrial Statement in accordance with this Court's September 22, 2023 Order; pursuant to Fed. R. Civ. P. 16(c)(2) and Fed. R. Civ. P. 26(a)(1); and complying with Local Rule 16.2(b)(1) and Fed. R. Civ. P. 26(a)(1).

Wendt reserves the right to supplement the information identified herein as additional facts are ascertained, analyses are made, legal research is completed, contentions are made, and orders are issued.

A. BRIEF FACTUAL OUTLINE

In the spring of 2019, Wendt temporarily stayed with his brother-in-law, Bill Briggs, in a Flying J subdivision while he was relocating to the area to start serving as a Beaverhead County deputy sheriff. Soon after, Wendt permanently relocated to Lima, Montana.

Wendt, as a sheriff's deputy, received a complaint from Paul Burt in April 2019 that Burt's neighbor, Hill, was growing marijuana in his garage at 77 Kezia Lane. Burt told Wendt that Hill had visitors at the 77 Kezia Lane property at all hours of the day including "shady looking" characters with out-of-state license plates. Wendt investigated Burt's complaint and learned that Hill was a legal grower licensed with the State of Montana to grow medical marijuana. Wendt communicated his findings to Burt. Burt stated that the homeowners' association

forbade businesses to operate from the subdivision's residences. Burt communicated that the homeowners' association was filing a civil lawsuit against Hill. That concluded Wendt's involvement until around the first of the year in 2020.

At the beginning of 2020, Wendt first personally noticed suspicious activity at 215 East Bailey in Lima, Montana, as it is a small community in which he personally resides. Over the following couple of months, Wendt personally observed a lot of activity at the Quonset hut located next to a vacant house at 215 East Bailey during his regular patrols of the small town of Lima as part of his regular duties as a sheriff's deputy based out of Lima. Wendt observed with his trained eye that all of the Quonset hut's windows were covered in black plastic. Wendt also noticed Hill's truck. Wendt then called Joe Richard who owned 215 East Bailey, who communicated that he sold the property to Hill.

Linda Cochran, who lives at the property behind 215 East Bailey complained to Wendt that she gets a strong skunk smell—which in Wendt's experience is common to marijuana—when the wind blows from 215 East Bailey. Ritch and Cindy Bowman, whose house is approximately 20 feet from Quonset hut, complained to Wendt that a skunk smell—in Wendt's experience is common

to marijuana—will linger in their home. Wendt observed this smell from the neighbor's yard himself.

Wendt investigated his own observations and the neighbors' complaints by contacting Devin Keller at Montana's Medical Marijuana Program ("MMP") as the Registered Premise Inspector on April 11, 2020. Keller stated to Wendt that there is not a medical marijuana grow operation registered at 215 East Bailey or anywhere else in Lima. Keller informed Wendt that if medical marijuana card holders are growing for their personal use, they have to grow at their residence and no cardholders were cultivating for their own use on East Bailey. This was confirmed on April 15, 2020.

Wendt continued his investigation by calling Justin Bair of Vigilante Electric to ask about power use at 215 East Bailey in the last few months. Bair stated to Wendt that there was a significant rise in power usage at the property. Bair indicated that Hill is paying residential power rates. Bair also told Wendt that Richard Reyes did some electrical work for Hill.

Wendt followed Bair's information by contacting Reyes. Reyes stated that he wired the Quonset hut for Hill in late January-early February 2020. Reyes told Wendt he wired in grow lights and fans. Reyes stated during his electrical work at 215 East Bailey, he observed 15-20 marijuana plants present.

On April 11, 2020, a drug case was opened, and dispatch ran and printed 8-pages of Hill's criminal history for Wendt.

After compiling and analyzing all information received from his own routine observations of the property, the neighbors' complaints of marijuana smell, learning no medical marijuana license existed at the property, learning about increased power use, and having a witness state 15-20 plants were observed, Wendt applied for a search warrant on April 20, 2020 at approximately 11:20 a.m. for the house and Quonset hut at 215 East Bailey upon information and belief that Plaintiffs were operating an unlicensed marijuana grow facility.

At approximately 1:57 p.m. hours Deputy Haggard, Deputy Bowman, Deputy Stewart, and Deputy Wendt traveled to 215 East Bailey. Deputy Haggard could smell marijuana—based on his knowledge, training, and experience—from outside. Lee Salmonsen was at the property. Salmonsen indicated to the deputies that he lives in the camper parked in front of the residence at 215 East Bailey. Salmonsen told deputies that he has a medical marijuana card and had four medical marijuana plants growing in the Quonset hut. Salmonsen indicated that he'd been out of town and Hill maintained Salmonsen's plants while he was away. Wendt told Salmonsen that the deputies were there to serve a search warrant. Salmonsen offered to lead the deputies through the locked back door of the Quonset hut.

While inside the Quonset hut with Salmonsen, Wendt and Salmonsen called Keller to confirm validity of Salmonsen's medical marijuana license to grow at 215 East Bailey.

Upon entering the Quonset hut, Wendt observed a large-scale grow operation. Deputies Bowman and Haggard also observed a strong and overwhelming smell of marijuana based on their knowledge, training, and experience. There were large grow lights, fans, potting soil, fertilizer, a diagramed white board, thermometers, large pH-balanced water troughs, a watering system, notes showing what was grown and to-do list items including "bigger babies to 5gal" and "trim mothers", potting beds, large plant stems in garbage bins, labels, humidifiers, seeding containers, loose buds, and other equipment for growing and shipping. There were four live marijuana plants present, which Salmonsen stated belonged to him. Salmonsen denied that anything else in the Quonset hut belonged to him. Salmonsen waited outside while the deputies completed their search, which seized the following items:

1. Black garbage bag with 52 individually wrapped bags of green leafy substance;
2. Black tote with 7 individually wrapped bags of green leafy substance;
3. Glass pipe with green leafy substance;

4. 2 small note books;
5. 1 calendar;
6. 1 black pan with green leafy substance;
7. Small dry erase board;
8. Gray tote with 12 individual bags of a green leafy substance and a glass container with green leafy substance inside;
9. Gray tote with 31 individual bags of green leafy substance;
10. Small cardboard box with rolling papers and a bong with residue;
11. Black garbage bag of started plants and labels;
12. Plant with loose leaves; and
13. 3 bottles of THC flavoring.

Deputy Bowman photographed the search. Deputy Haggard and Deputy Stewart collected evidence. All items that were seized were loaded into a cargo trailer and a seized evidence receipt was left at the property by Wendt. The collected evidence was transported to the Sheriff's Office and placed into a secured evidence room. At the Sheriff's Office, deputies weighed the green leafy substance suspected to be marijuana based on the deputies' knowledge, training, and experience. The substance weighed—unofficially—over 27 pounds. This concluded Wendt's involvement.

On May 15, 2020, the suspected controlled substances was received by the Montana Department of Justice Forensic Science Division, which was identified as marijuana/tetrahydrocannabinol in a report dated September 7, 2020.

On May 21, 2020, discovery was released to the county attorney. On September 3, 2020, Deputy Haggard served a subpoena to Vigilante Electric for the 215 East Bailey records from Joe Richard on February 22, 2018 to October 8, 2019 and Chad hill from October 8, 2019 until September 3, 2020.

B. FEDERAL JURISDICTION AND VENUE

Federal jurisdiction—based on federal question—and venue are proper in United States District Court, District of Montana, Butte Division under 28 U.S.C. § 1331 and 28 U.S.C. § 1391(1) and (b) (2022), respectively.

C & D. FACTUAL BASIS AND LEGAL THEORY FOR EACH DEFENSE

At this early stage of litigation and investigation and pending Wendt's Motion to Dismiss that is currently being briefed, Wendt has not yet set forth affirmative defenses. A ruling on Wendt's pending Motion to Dismiss will inform which affirmative defenses Wendt intends to raise depending on the factual circumstances and applicable legal theories. Should Wendt be required to answer Plaintiffs' Complaint following a ruling on his pending Motion to Dismiss, Wendt will supplement this Preliminary Pre-trial Statement as to Sections C & D.

E. COMPUTATION OF DAMAGES

Wendt denies all claims of liability and damages against him. Wendt is not seeking damages in this matter. Wendt reserves the right to assert a claim for costs and reasonable attorneys' fees as allowed by statute, agreement, common law, equity, or otherwise.

F. RELATED LITIGATION

To Wendt's knowledge, Plaintiff Hill was the named defendant in DC-1-2020-3860 in Beaverhead County District Court, the underlying criminal case. To Wendt's knowledge this case was dismissed without prejudice.

To Wendt's knowledge, Plaintiff Bissette was the named defendant in DC-1-2020-3860 in Beaverhead County District Court, the underlying criminal case. To Wendt's knowledge this case was dismissed without prejudice.

To Wendt's knowledge, Flying J Ranch, LLP has filed a civil action against Plaintiff Hill regarding violation of the homeowners' association's covenants, but Wendt has no further information regarding the cause number, court, or disposition of that lawsuit.

G. ADDITIONAL PROPOSED STIPULATIONS

At this time, Wendt proposes the following additional stipulated facts beyond those Stipulated Facts filed by Plaintiffs' Counsel on October 26, 2023:

1. In the spring of 2019, Wendt temporarily stayed with his brother-in-law Bill Briggs in a Flying J subdivision while he searched for permanent housing when relocating to Beaverhead County to be a Sheriff's deputy.

2. Shortly thereafter, Wendt permanently moved to Lima, Montana where he lived throughout the duration of the allegations in the complaint made against him.

3. In April 2019, Burt approached Wendt and stated that Hill had a marijuana grow operation in his garage at 77 Kezia Lane with traffic of "shady looking" characters with out-of-state plates coming at all hours.

4. Wendt investigated Burt's complaint and learned that Hill was a legal grower of and was licensed with Montana to grow medical marijuana.

5. Burt informed Wendt that the homeowners' association forbade activities of business operation from the subdivision's residences. Burt told Wendt the homeowners' association was filing a civil lawsuit against Hill.

6. Hill purchased 215 East Bailey from Joe Richard on October 8, 2019.

7. In April 2020, Salmonsen was living in a camper at 215 East Bailey near the Quonset hut.

8. Salmonsen had a medical marijuana card, which allowed him to grow his own personal medical marijuana.

9. There was a large energy-use increase at 215 East Bailey in the few months before April 2020 as reported by Vigilante Electric to Wendt.

10. In January 2020, Wendt noticed Hill's truck at 215 East Bailey and all the windows of the Quonset hut covered in black plastic during his regular patrols of Lima as Beaverhead County Deputy Sheriff.

11. Wendt contacted Joe Richard, the previous owner of 215 East Bailey, who informed Wendt he sold the property to Hill.

12. Three neighbors—Linda Cochran, Ritch Bowman, and Linda Bowman—spoke to Wendt and reported strong skunk-like smells coming from the Quonset hut.

13. Richard Reyes, an electrician, reported to Wendt that he saw 15-20 plants in the Quonset hut when he was doing electrical work.

14. On April 15, 2020, Devin Keller, an Inspector Supervisor of Montana's Cannabis Control Division, told Wendt via email that the State does "not have any licensed providers growing on [East Bailey]. I could also not find any cardholders cultivating for their own use located [at 215 East Bailey]."

15. Wendt spoke with Salmonsen on April 20, 2020, who was the only person on the property of 215 East Bailey.

16. Salmonsen disclosed to Wendt that he had four marijuana plants for

personal use and consented to the search of the shared-use Quonset hut.

17. Salmonsen disclosed to Wendt that he had a medical marijuana card.

18. Salmonsen told Wendt that he was in Seattle, Washington undergoing heart surgery, and Hill tended to his marijuana plants in the hut.

19. Based on knowledge, training, and experience, Wendt believed he saw a large grow operation in the Quonset hut.

20. There were four live plants in the Quonset hut, which Salmonsen previously disclosed, and multiple totes of dried, cut, packaged, and labeled suspected marijuana.

21. While inside the Quonset hut with Salmonsen, Wendt and Salmonsen called Keller to confirm validity of Salmonsen's medical marijuana license to grow at 215 East Bailey.

22. The deputies ultimately seized over 27 pounds of dried and cut marijuana, drug paraphernalia, and more, all of which was outlined in their Search Warrant Return.

23. The deputies also identified personal items of Bissette and Hill within the Quonset hut—none of which were seized.

H. DEADLINES RELATING TO JOINDER OF PARTIES AND AMENDMENTS TO PLEADINGS

Per the Parties' Joint Discovery Plan filed by Plaintiffs' counsel on October

26, 2023, the Parties propose January 12, 2024 as the time frame to amend the pleadings or join additional parties.

I. IDENTIFICATION OF CONTROLLING ISSUES OF LAW SUITABLE FOR PRETRIAL DISPOSITION

At this time, all the issues that will be subject to pretrial disposition are not known. However, there are pending Motions to Dismiss by Wendt and Beaverhead County, separately, which speak for themselves. Wendt also intends to file dispositive motions premised on any appropriate affirmative defenses once pled, as discussed *supra*. Such controlling issues may, but are not limited to, statutory and qualified immunity.

J. INDIVIDUALS WITH KNOWLEDGE OF CLAIMS OR DEFENSES

1. **Chad Hill** – Plaintiffs' claims.

**c/o Bechtold Law Firm
PO BOX 7051
Missoula, MT 59807
406-721-1435**

2. **Louisa Bissette** – Plaintiffs' claims.

**c/o Bechtold Law Firm
PO BOX 7051
Missoula, MT 59807
406-721-1435**

3. **Paul Burt** – Defendant's defenses.

**c/o Williams Law Firm
PO Box 9440
Missoula, MT 59807
406-721-4350**

4. **Ted Caldwell** - Defendant's defenses.
**c/o Williams Law Firm
PO Box 9440
Missoula, MT 59807
406-721-4350**
5. **Sheriff David Wendt** - Defendant's defenses.
**c/o Garlington, Lohn & Robinson, PLLP
PO Box 7909
Missoula, MT 59807
406-523-2500**
6. **Undersheriff Ceth Haggard** - Defendant's defenses.
**c/o Mitch Young
County Litigation Group
PO Box 6697
3715 Skyway Dr.
Helena, MT 59604
406-441-5471**
7. **Deputy Aaron Bowman** - Defendant's defenses.
**c/o Mitch Young
County Litigation Group
PO Box 6697
3715 Skyway Dr.
Helena, MT 59604
406-441-5471**
8. **Reserve Deputy/Chaplin Dale Stewart** - Defendant's defenses.
**c/o Mitch Young
County Litigation Group
PO Box 6697
3715 Skyway Dr.
Helena, MT 59604
406-441-5471**
9. **Devin Keller** – Cannabis licensing requirements and statutes for

Plaintiffs, Plaintiffs' claims, and Defendant's defenses.
406-417-9701

10. **Richard Reyes** – Witness to Plaintiffs' grow operation when he was hired to do electrical work at their property as an electrician.
11. **Justin Bair** – Communications with Wendt regarding 215 East Bailey's electrical power usage over time and such usage.
**Vigilante Electric
PO Box 1049
Dillon, MT 59725
406-683-2327**
12. **Linda Cochran** – Observations of activity and smells at and around 215 East Bailey since Hill's purchase of the property.
**112 South Main
Lima, MT 59739**
13. **Ritch Bowman** – Observations of activity and smells at and around 215 East Bailey since Hill's purchase of the property.
**223 East Bailey
Lima MT, 59739**
14. **Cindy Bowman** – Observations of activity and smells at and around 215 East Bailey since Hill's purchase of the property.
**223 East Bailey
Lima MT, 59739**
15. **Lee Salmonsen** – Relationship to Plaintiffs, Plaintiffs' grow operation and its history during the course of the pleaded allegations, Beaverhead County and Wendt's investigation and search.
**215 East Bailey
Lima, MT 59739**
16. Any witness identified by any other party.
17. Any witnesses needed for impeachment or rebuttal.

K. APPLICABLE INSURANCE THAT MAY COVER ANY RESULTING JUDGMENT

Wendt was insured under Beaverhead County's 2019-2020 insurance policy #BE01PCT2020 through Montana Association of Counties (MACo) for the applicable period. MACo's Manuscript Liability Agreement is disclosed herewith.

L. SETTLEMENT FEASIBILITY AND DISCUSSIONS

To date, no settlement discussions have taken place. Future settlement may be appropriate depending on information provided or learned in this litigation.

M. SUITABILITY OF SPECIAL PROCEDURES

Wendt does not anticipate any special procedures at this time.

WHEREFORE, Beaverhead County Sheriff David Wendt respectfully submits the foregoing Preliminary Pretrial Statement.

DATED this 26th day of October, 2023.

/s/ Marisa L. Heiling
Attorneys for Defendant Sheriff David Wendt